

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
SEPTEMBER 10, 2008**

CALL TO ORDER A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Gordon Cross, Marie Hickey-AuClaire, Gene Dziza, Mike Mower, Jim Heim, Marc Pitman, Frank DeKort, and Rita Hall. Randy Toavs had an excused absence. Andrew Hagemeyer, Alex Hogle, and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 32 people in the audience.

APPROVAL OF MINUTES Dziza made a motion seconded by DeKort to approve the July 16, 2008 and July 23, 2008 as corrected.

The motion was carried by quorum.

PUBLIC COMMENT None.

FETVEIT ET AL (FZC 08-07) A Zone Change request in the Highway 93 North Zoning District by Samantha Fetveit, Kevin & Austina Veyna, Hal & Rebecca Bauer and John Anderson from AG-40 (Agricultural) to SAG-5 (Suburban Agricultural).

STAFF REPORT Andrew Hagemeyer reviewed Staff Report FZC 08-07 for the Board.

BOARD QUESTIONS Cross asked about the Riverdale plan. He never received a copy of the final plan and wanted to know if changes had been made. 5-acre lots had previously been discussed and agreed upon for lots pertaining to McDermott Lane because of its proximity to the landfill. One of the property owners from this area stated his concern about future uses of the landfill at several meetings. He thought the board had not discussed access for Prairie View Way. He said the wording in the plan is confusing because it says if a lot is within 1320 feet of the landfill, 5-acre lots would be acceptable but if it's within the landfill transition area, the lots had to be 20 acres.

Hagemeyer said policy 8.1 of the Riverdale Neighborhood Plan covers that issue. The policy says 1 unit per 20 acres was acceptable on lots that are in the landfill transitions area. He pointed out on a map of the area exactly which lots that included.

Cross asked Hagemeyer to point out exactly where the landfill and Riverdale boundaries are located. He said parts of Riverdale border the landfill area but it is not considered landfill transition.

Hagemeyer pointed them out on the map and in the staff report.

**APPLICANT
PRESENTATION**

Olaf Ervin, of Montana Mapping, said he took on this zone change before the Riverdale Neighborhood Plan had been adopted and finalized. The original application is based on the draft of that plan. The Riverdale Land Use Advisory Committee (RLUAC) recommended a zone change to the southeast SAG-5 parcels but to leave the two northern parcels alone. He was not going to argue with the fact he was inconsistent with the Riverdale Neighborhood Plan and the Growth Policy. He previously talked to the staff about bringing this application to the board without altering it due to cost and timeframe issues. He said what had been applied for is different than what was recommended by the RLUAC.

Cross verified with Ervin that he was okay with the recommendation from RLUAC to deny two of the applications and to approve the two southern ones.

Ervin said he could not go against the Staff Report, if the two northern parcels didn't work with the neighborhood plan then that's what he had to go with. Things changed throughout the process and he had to proceed forward with what he had. He appreciated staff reading the agency comments during his presentation. He referred to the comment made by Dave Prunty, Director of Public Works, which said they found the requested zone change acceptable. Concerning the road and dust issue, he noted Prairie View Road was used as a reroute during construction in August 30, 2007 and September 6, 2007 when the traffic count for this application was done. He feels the count does not represent the typical use of this road. The numbers from 2002 to 2006 are more consistent and better represent the use of this road. He looked at all the parcels that have access to this road; there are 94. Of those 94, only 49 of them have residential structures on them. He estimated there would only be 7 added trips per day. He figured if all 4 parcels were changed to SAG-5, split to their full potential of 5-acre lots, and were all-residential; the traffic increase would be 24.4%. The recommendation from RLUAC to accept the 2 parcels would only increase the traffic 12.2%. He felt the roads and dust were reviewed in an admirable way. The recommendation from the committee addressed the inconsistencies with the Growth Policy and the Neighborhood Plan.

**BOARD
QUESTIONS**

Cross said it was not fair of Ervin to ask Staff to ignore a county standard regarding trips generated by lot. There are set standards.

Ervin understood that. He thought staff needed to compare potential traffic from this zone change with potential traffic from the existing parcels. He said it didn't make sense to him to compare potential conditions to actual conditions.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENTS**

Gary Krueger, 805 Church Drive, has farmed this property for 16 years and new the original owners very well. He said the board needs to compare apples to apples. In 1993 when the North Zoning District was put into place, the original owner subdivided his land into 20 acre lots. He thought this application was unfair in regards to subdividing the land. He said new owners would be able to subdivide trough family transfers or minor review. Where as larger lots would require a major subdivision review that would require applicants to mitigate impacts. He asked the board to deny this application until there is a Planned Unit Development (*PUD*) in place.

**APPLICANT
REBUTTAL**

Ervin said everyone is entitled to their opinion. The Future Land Use section of the Riverdale Neighborhood Plan looks forward to residential agriculture and limited suburban agriculture. He said at first he tried to change the zoning to SAG-10 but the two southern parcels did not concur. He had to go with a SAG-5 zone change because it was the least dense zoning that would be consistent with the Riverdale Neighborhood Plan. He suggested to RLUAC that if any changes needed made to the neighborhood plan they should make motions to do so.

Cross asked about the deed restrictions on all 4 parcels and if it was indicated that the land could not be divided in less than 10-acre parcels.

Ervin said yes, it is stated in the covenants.

Cross asked if he picked SAG-5 because he thought it would be more compatible on the map.

Ervin said he picked SAG-5 because it appeared the only zone change consistent with the Riverdale Neighborhood Plan.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

None.

**MOTION TO
ADOPT F.O.F.**

Dziza made a motion seconded by Hickey-AuClaire to adopt finding-of-fact as amended.

**MOTION TO ADD
F.O.F. #14**

Cross made a motion seconded by Pitman to add finding-of-fact #14 to state: *The applicant has stated their willingness to abide by the recommendation of the Riverdale Land Use Advisory Committee.*

**ROLL CALL TO
ADD F.O.F. #14**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Cross asked Hagemeyer if the board was to go along with the recommendations from the RLUAC, would that change any of the findings already reviewed.

Hagemeyer said it is subjective, it could change the numerical value of some of the findings; they would be cut in half. Other than that, he could not say for sure.

Cross said staff's findings are based on the original application, including all 4 parcels, not on the RLUAC recommendation.

Hagemeyer said if the board approved this application as recommended, the biggest difference he can foresee is the distance of Prairie View Way. It would no longer be 2700 feet without an emergency turn; it would be approximately 1200 feet.

**ROLL CALL TO
ADOPT F.O.F. AS
AMENDED**

On a roll call vote the motion passed unanimously.

**MOTION TO
DENY**

Hickey-AuClaire made a motion seconded by Hall to adopt Staff Report FZC 08-07 and recommend denial to the Board of County Commissioners.

**BOARD
DISCUSSION**

Hickey-AuClaire was concerned with the deed restrictions on the property. She also questioned if the applicants are okay with only doing two parcels instead of four.

Hall said when reviewing an application her first concerns are always health, safety, and whether or not it will better the Flathead Valley. She did not see how this zone change was going to better the Flathead. She thinks the dust complaints regarding this application are significant. She didn't like the fact the applicants were trying to change an AG-40 zone to a SAG-5 zone, skipping all the zones in-between. Furthermore, these parcels already have deed restrictions in place. She said it is not a privilege for the board to give applicants whatever zone change they request. She asked the other board members to consider the duration of ownership and how it has recently changed. Riverdale has not been around very long and these applicants are just jumping on an opportunity. She said she could not imagine who would want to live next to a landfill.

Heim agreed with what Hall said. He was not in favor of this application either.

Cross referred back to the original Riverdale analysis. He said there were concerns about several large landowners in the area and why they were encouraged to put PUDs in place. He asked Harris if a PUD for a smaller landowner is an onerous requirement and if it is expensive.

Harris said it depends on what's going to be done. There were many people involved in the Riverdale plan but one thing everyone agreed on was that there should not be zone changes or development until the infrastructure is in place. He could not really answer the question of whether it was onerous or not. He said location often dictates whether something is more expensive than not. Staff does not know for certain, if this is a bad zone change or not. It could just be the timing is bad without the infrastructure in place to entertain a zone change like this.

Cross felt the timing would be right when one of the large landowners in the Riverdale area, paved Prairie View Lane; that would eliminate most of the dust. He thought this zone change could be a possibility in five years.

Mower disagreed with Hall about the length of ownership having any merit in the final decision for this zone change. He felt this change was just not appropriate at this time.

The board and staff discussed, at length, the landfill transition area in regards to this application.

**ROLL CALL
TO DENY**

On a roll call vote the motion passed unanimously.

**HUNTER/OGRIN
(FZC 08-08)**

A Zone Change request in the Bigfork Zoning District by Margret Hunter and Kirk Ogrin from SAG-10 (Suburban Agricultural/10 acres) to SAG-5 (Suburban Agricultural/5 acres).

STAFF REPORT

Andrew Hagemeyer reviewed Staff Report FZC 08-08 for the Board.

**BOARD
QUESTIONS**

Pitman said there were two parcels mentioned in the report, but he thought there was only supposed to be one parcel.

Hagemeyer said that was a typo. There is only one parcel.

Pitman asked about the parcel only being 9.9 acres.

Hagemeyer said the Bigfork Land Use Advisory Committee (*BLUAC*) noticed the same thing. He used the county Geographical Information System (*GIS*) to get an approximation of the acreage of this parcel. He thought the reason it was not a full 10 acres is 1/10th of an acre is in the road easement. It does count towards their gross acreage but the GIS site did not include it. He does believe this lot is truly a total of 10 acres.

Mower said when he looks at the adjacent land to the north, south, and west they are all zoned SAG-10. It looked to him as though staff tried to put an island in the middle of this area.

Hagemeyer thought it was more of a split than an island because it is extending SAG-5 zoning already in place.

**APPLICANT
PRESENTATION**

Erica Wirtala, of Sands Surveying, represented the applicant. She agreed with Hagemeyer's Staff Report and the unanimous decision by BLUAC to approve this change. The applicants were at the land use committee meeting and no one spoke in opposition for this proposed zone change. The purpose of this application is for family transfers. She said there is a road bordering the southern edge of the property, which was originally supposed to be an extension of Arrow Lane. This road was paved and built to county standards. The extension of this road was not completed and will now be the applicant's private driveway. There is a deed and a certificate of survey (COS) in place regarding the acre size. The applicant will look further into the matter if the zone change is accepted and the family transfer does take place.

**BOARD
QUESTIONS**

Heim asked Wirtala why a family transfer could not be done without a zone change.

Wirtala said family transfers, boundaries line adjustments, and exemptions have to comply with zoning regulations. At this time, this one does not.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENTS**

None.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

None.

**MOTION TO
ADOPT F.O.F.**

Heim made a motion seconded by Hickey-AuClaire to adopt FZC 08-08 as finding-of-fact.

**BOARD
DISCUSSION**

Pitman said the wording in the staff report needed changed regarding the two parcels, there should only be one.

Cross asked Hagemeyer if he would change that typo and if he would be adding the results of the BLUAC meeting to his report so the board does not need to add it as a finding-of-fact.

Hagemeyer agreed to change the wording about the parcels and adding the results of the BLUAC meeting.

ROLL CALL

On a roll call vote the motion passed unanimously.

**MOTION TO
APPROVE**

Hall made a motion seconded by Hickey-AuClaire to recommend approval of staff report FZC 08-08 to the County Commissioners.

**BOARD
DISCUSSION**

Mower was opposed to the application. He felt this application clearly fell under the spot-zoning category. Two of the three criteria failed to be met. The first being whether the zone change affected only one person. The second was whether or not the change would affect or change adjacent properties. He said he is never in favor of spot-zoning regardless of circumstances.

Cross said he was amazed no one from Bigfork showed up for this meeting. Usually when there is a zone change request from a SAG-10 to a SAG-5 more people come to comment. He thought this zone change would compromise the geographical integrity of land in this area. He asked Hagemeyer if he considered that an issue.

Hagemeyer said that is the basic function of the neighborhood plan. The plan says it is okay for everything in that area to be zoned as SAG-5 unless there is a safety or environmental concern.

Cross asked Hagemeyer, from a planner's perspective, if he thought it was acceptable to have a "checkerboard" of parcels with SAG-5 and SAG-10.

Hagemeyer said it was not a desirable scenario but staff has to work within the applicable plans; maybe this is a weakness in the neighborhood plan or growth policy.

Pitman agreed this application would spot-zone the SAG-10 area. He has seen several areas like this zoned in error. There are lots on 3 sides that have less than 10 acres. He said he did not want to perpetuate an error. He wasn't sure how these lots were split in the first place.

Mower said sins of the past are sins of the past. Just because something was done wrong in the past does not mean it needs to be done wrong in the future. The area is still surrounded by SAG-10 zoning.

Pitman said the sin of the past was that the area was originally zoned SAG-10 when none of the lots are 10 acres.

Hall was concerned with what Pitman said. The neighborhood plan has already preapproved the area to be zoned SAG-5 so it makes perfect sense to zone it as SAG-5.

**ROLL CALL
TO APPROVE**

On a roll call vote the motion passed 6-2 with Cross and Mower dissenting.

**RIVERPARK OF
WHITEFISH
(FPP 08-12)**

A request by AVKO LLC for Preliminary Plat approval of Riverpark of Whitefish, a twenty-two lot single-family residential subdivision on 66.488 acres. Lots in the subdivision are proposed to have public water and individual septic systems.

STAFF REPORT

Alex Hogle reviewed Staff Report FPP 08-12 for the Board.

**BOARD
QUESTIONS**

Pitman asked what evidence Hogle had of flooding.

Hogle said the visible evidence is very noticeable. From first-hand experience on the property, he noticed patterns in the grass near the wildlife pond that suggested water had been present and received. He also looked at historical photos where one can clearly see where meandering channels were present. The equilibrium of the river has changed in dynamics. He asked the board to look at the copy of the Firm Panel in their handouts. The area mapped as zone A has a Letter of Map Amendment (*LOMA*) in place. He was concerned with flooding on adjacent properties if the north part of the property floods. Subdivision regulations require all lots to have a buildable area located outside the 100-year floodplain. That does not mean a lot cannot contain areas in the 100-year floodplain nor does it mean that certain areas will not experience flooding. The staff report has recommendations to minimize impacts to wildlife, wildlife habitat, natural environment, and public safety. The developers have proposed a no-build zone, which is not a subdivision regulation. Its intent is to minimize impacts in sensitive areas. He recommended all west side lots be pulled back to the 100-year floodplain.

DeKort asked to see the test hole map again. A test hole between five and six does not have a monitoring number.

Hogle said he noticed that as well. He pointed out to the audience the test hole on the map. This hole was not included in the groundwater monitoring information submitted. He did not have a reason why it was just omitted some how.

Cross asked if the second plat includes storm water drains.

Hogle said yes, they are grass swells. The intent of the grass swells is to guide storm water to lower elevations.

Cross asked why Hogle didn't make a finding-of-fact in regard to his concern with this development being out of character.

Hogle said there is not a requirement to add findings-of-fact on items not in the primary view criteria outlined by the state. Planners are now following a new template for staff reports. A section discusses background information that is relevant but not required to be made a finding.

DeKort asked what activities could take place in the no-build zone.

Hogle said the no-build zone is intended not to disturb the vegetation and no construction or development is allowed. However, there is currently some disturbance due to enhancement work being done on

the pond. The developers are currently doing work that is intrusive to the landscape but the concept is that when completed, they will re-vegetate, reseed, and let it be.

DeKort said that concept was not very obvious to him when he visited the site that day.

Pitman asked if the area had been plowed for cultivation.

Hogle referred to a map of the area and pointed out where the land was split into two sections. The west section is pristine bottomland. The east section was utilized for cultivation in the past. It was hard to tell how much of the land was cultivated due to recent excavating in the area.

Hall said she knew the previous owners and has been driving by this property for 30 years. She feels the pond would be an enhancement to the property and said the flooding in this area varies from year to year.

APPLICANT PRESENTATION

Eric Mulcahy, of Sands Surveying, represented the applicants. This subdivision is different than what is typically seen in the area. He said the applicant agrees with all the conditions. After receiving the staff report, they amended their plat to pull back lots to the floodplain boundaries. The land use around the area is somewhat commercial. There is a ministry to the north, a label resource plant across the street, and several residents and a horse training facility to the south. The applicant is proposing a subdivision that will comply with all standards for road access and placement of structures. They will install a no-build zone along the base of the subdivision to create a buffer for open space. The applicant realizes the lower area does flood seasonally. He spoke in regard to the floodplain and LOMA issue. FEMA did many of their floodplain maps for the Flathead Valley in the earlier 1980's. He said the outskirt areas were approximated. FEMA did not do studies or a topographic survey on these areas. Instead, they used a quad map with a 20-foot contour and essentially "brushed" in a floodplain. The applicant went through the full LOMA process, which details the floodplain. A cross-section test was done in the river channels to see if any problematic channels would affect this property. The applicant placed the building envelopes 10-ft above the 100-year floodplain. He said the building sites are not in the floodplain; it had been confirmed by the State, FEMA, and consulting engineers. The applicant and developers are following the subdivision regulations for density guidelines because there is not a designated policy in the Growth Policy and the area is unzoned.

BOARD QUESTIONS

Cross asked if the applicant was okay with the condition for no subdividing when it is not restricted in the covenants.

Mulcahy said it was not a concern, they never intended on subdividing this area.

DeKort asked why page 15 of the CC&R's said the owner reserves the right to expand or separate and include additional properties of the current remainder area. He wanted to know where the current remainder area was.

Mulcahy said while talking to other developers if the applicant acquires other properties continuous to this it would be absorbed into the association of the subdivision.

DeKort asked if he had any comment on the test holes regarding the missing monitoring number.

Mulcahy said he was not sure why that info was omitted.

Dekort asked when would be the most appropriate time to do groundwater monitoring in this area.

Mulcahy said in spring.

Cross asked Hogle to summarize the four agency comment letters that were not in the file, for the board and public.

Hogle summarized the letters for the board and the public.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENTS**

Steve Quinell, of Whitefish, said he is running for County Commissioner this year. He likes this subdivision and feels many of people's concerns had been taken care of. He said the applicant went out of his way to ensure the protection of the river corridor well beyond county requirements. He was concerned about the depth-to-water analysis. The test holes were dug in areas where water was not likely to be found. He was also concerned about the density of the lots. It was stated in the staff report and agency comments that the density of this subdivision is unprecedented. These densities are smaller than the 2.5 acre suburban residential lots in Whitefish. The Environmental Assessment (EA) states a majority of this land was used for agricultural purposes in the past and this subdivision will not have as great of an impact on the land. He did not see how that was possible. In terms of density, this subdivision is out of compliance with the Growth Policy. Several statements within the policy state the character and nature of our rural areas need to be preserved. He spoke about growth and property rights. Putting this development in this area is way out of balance with the kind of growth that is expected. At this density and proximity to the river there is a significant threat to water quality.

Laura Munson, 155 Livermore Flats in Whitefish, passed out binders to the board. She thanked the board for what they do for the county

and the valley. She said this is an agricultural area and does not want to see it cut up into 3-acre parcels. She went through the contents of the binders and briefly explained what each section entailed. She asked the board to look at the letters from 2007 written from some of her neighbors whom felt they were approached inappropriately about the subdivision. She was upset about the law that only residences within 150 feet of the subdivision buffer are notified of potential subdivisions. She started a petition in opposition of this subdivision and said not one person opposed signing it.

Tom Perkins, 7655 Farm to Market Road, has lived and farmed in the area for several years. He discussed his concern with the flooding issue at length. He showed the board pictures from 1996 and last spring's flooding. He said the volume of water from the Stillwater River that flows into this area is unbelievable. He had a problem with the no-build zone. He is concerned about the school bus; with more people out there, more busses will be necessary as well as other city services. The density is excessive. This is one of the nicest areas in the Flathead Valley. He submitted pictures to staff to add to the file.

Bobbie Hall, 4295 Hwy 93 West, is a native Montanan and has lived here for 36 years. She had been told by others she was wasting her time coming to this meeting. She hoped that was not true; she wanted to be heard. She owns a horse training business and spoke about her personnel experience and her business in this area. There are 6 lots proposed to be built, bordering the north end of her property. Two of those lots are proposed to be to drain fields and mixing zones. She was very concerned about what will happen to the wildlife in the area if this subdivision is accepted. She commended the Farris family for building their factory away from the highway and keeping it a rural area. She also had concerns about the Stillwater River becoming more polluted and the floodplain issues. She is not opposed to the subdivision just the density of it in this rural area and asked the board to deny it. She wanted the developers to reassess this application and develop a more responsible plan that is sensitive to the area. She feels 10-acre lots would comply with the rural neighborhood and would be consistent with the Growth Policy.

Karlene Khor, 229 7th Street West in Kalispell, is the manager of an LLC and owns commercial property in Kalispell. She is not a novice to development. She gave an analogy to the board stating this subdivision is like a cactus. There is not one big problem with subdivision but several small prickles. She spoke with several people from FEMA to try and better understand what their roll is in planning a subdivision. Tom Bernie, from FEMA, asked her to tell the board and the public to contact him with any new information they might have. She asked the board to take into consideration how this floodplain boundary change accrued and to consider how it could be reversed. She has taken horse riding lessons from Bobbie Hall. She feels if this subdivision is approved, it would no longer be a safe place to take lessons.

Patrick Carloss, 3989 Hwy 93 North, Whitefish, has only lived in the area 15 years. He said no one in there right mind would build in this area. He felt this subdivision was designed out of greed and was completely uncharacteristic of the area. He said there is a ton of wildlife because it is a rural and there's a reason they're there. He appreciated the location of the label plant and the owner's consideration for the area. He asked staff about the language in the covenants that mention the possibility of expanding the subdivision from both sides. He also asked the board to deny this application.

Hogle said he recognized the language from the covenants of a prior subdivision called Eagle View Ranch. He figured the covenants have not been reevaluated for this subdivision.

Dick Hillstrom, 340 Tamarack Creek Road, Whitefish. He was concerned about the density of this project. He has done a lot of excavating on the east side of the Stillwater River for irrigation systems. One of the systems he helped put in was from a natural sump. The 310 Permit, obtained by the developer from the Water Conservation Board, was to reclaim an irrigation sump that was a natural sink. This indicated to him that the developer might not have been completely honest when he applied for the permit. He encouraged the board to look at this application with a critical eye. He felt a subdivision with larger lots would be better suited for this area.

David Fischlowitz, 263 South Reid Road in the Star Meadows area of Whitefish. He is a certified Green Professional. He felt the approach to this subdivision was to be cost effective showing no consideration for the surrounding rural area. He is opposed to this subdivision due to the water, emergency service availability, density, and wildlife issues. He feels the proposed subdivision would be a hazard to the community. The builder, proposing this application, recently built a home in Star Meadows and placed his septic tank less than 40-ft from the neighbor's source of water. It is the habit of this builder to be reckless and inconsiderate.

Amy Chadwick, 360 5th Avenue East N, is an Environmental consultant. Coincidentally, she was working on a habitat and sedimentary impairment assessment for the Stillwater River and its tributaries. This is an impaired stream as stated in 303D of the Impaired Waters manual, for impaired habitat and sediment pollution, due to excess sediment. The whole watershed needs to have a water quality restoration plan put in place to address all of these issues. She didn't know much about the application before this meeting. From what she heard, she recommended the board limit the density of the subdivision and make sure the stream corridor is protected. The 100-year floodplain does not mean this area floods only once every 100 years. She feels it's not realistic for people to think they can build up to this floodplain and be okay in the event a flood occurs. She said there are already problems with high nitrate levels in the lower part of the

Stillwater River; it would be a shame for problems to start in the upper areas too. The acceptance of this subdivision would allow other people to come in and disrupt the lifestyle of people already living there. She asked the board to set a good precedent by considering stream stability, wetland functions, water quality, and the people already living there.

Chris Jolly, 7240 Farm to Market Road in Whitefish, feels this subdivision would be too dense. She said the Boot Jack Lake district is zoned SAG-10 and is near this area. There is precedent for 10-acres and no less. She was upset the owner said he would not develop this land and now he is. She spoke about the wildlife in the area and her concern for where would they go. She asked the board to deny this application as it is. She would be in favor if the lot sizes were at least 10-acres.

Stephanie Reber, 4297 Hwy 93 West, has lived in this area for 12 years and is opposed to this subdivision. She shared her concerns about wildlife, density, floodplain, and traffic issues. Currently, there are approximately 1400 lots available for sale in the Valley, of those, approximately 600 are in the Whitefish area. These statistics leads her to believe this proposal, in its present form, would succeed in having the property to the north developed in the same manor. Development in this area would be even more detrimental to the current issues. As she understands it, many of the current residence are trying to get rural zoning for their properties. She said the developers have a right to develop their land, but it is the duty of the current residence to ensure the development embraces good planning. For that reason, this subdivision, by its own definition, should be in an urban setting. Time spent in creating an acceptable proposal can only mean success for the subdivision and will put the citizen's concerns to rest. She asked the board to take all concerns from all of the speakers into consideration when making their decision on this application.

Judy Owsouitz, 6505 Farm to Market in Whitefish, lives and farms in this area. She frequently canoes the River and loves the land. She had seen up to 10 eagles at one time in the area. She was very concerned about the runoff. This is a wildlife corridor and the animals feel safe here. She was concerned about the 5 acres of pavement that would accommodate the subdivision because it is toxic and takes up too much land. She felt it would create toxic runoff and run into the river. She asked the board to consider the area as one that needs to be treated with great respect.

Sherrie Sadino, 202 Spring Prairie Rd in Whitefish, said the duration of ownership was important to take into consideration. She talked about the added traffic the subdivision would bring. At approximately 10 trips per day for each family, there would be an added 200 trips per day. There are already several white crosses in the area signifying the amount of accidents that have already occurred. She feels spot-zoning

was something the developers wanted but it just doesn't fit in this area.

Pat Nissen, 3885 Hwy 93 North in Whitefish, was opposed to this subdivision. He felt it was too dense for the proposed area. Other speakers had already touched on his concerns.

**APPLICANT
REBUTTAL**

Rudy Koestner, 134 Garden Drive in Kalispell, wanted to make some clarifications. When he bought the property he diligently researched its boundaries by looking at the county's plat maps. The confusion of the boundaries was a mistake by the Montana Department of Transportation (*MDT*), on their survey; they mis-platted the right-of-way by using the wrong section corners. He does not have ownership of any other properties in this area. He does have an agreement with Stillwater Land Company to acquire a land-locked finger on the edge of the Stillwater River. He realized this land is in a high floodplain area and will not be used for construction. This agreement is the only thing he has in common with this landowner and does not know what future subdivision plans they might have, if any. He said the Stillwater Land Company owns a 30-ft right-of-way along Bobbie Hall's boundary and he plans to make that disappear as part of the land swap deal. He said there was an onsite inspection done by the Conservation District before he received the 310 permit for the wildlife pond. Members from Fish, Wildlife, and Parks also inspected the site, particularly the north-east side where there was flooding this past year. Based upon these inspections, the flooding was categorized as an Event Year. However, lot 21 had no water on it. According to the Department of Environmental Quality (*DEQ*), he would be bringing in water that would help mitigate the surroundings and bring in more wildlife. He said the LOMA was considered specifically for lots 1, 2, and most of 22 because those areas did not appear to receive runoff water in high water events. He spoke about the wildlife issue but thought the biggest issue was water quality. He recognized the fact that this is a sensitive river and said he would use proper septic systems. He thought most nitrates and phosphates, found in water, come from agricultural livestock waste. He asked the board to take into consideration that this is the only property he owns and is developing at this time.

**STAFF
REBUTTAL**

Cross asked Harris about his reference to the legal ruling by the District Court and how there might be potential items the board needs to be made aware of.

Harris said he was referring to the recent ruling regarding Haskell Mountain Ranch subdivision. The District Court denied the final plat for this subdivision for a range of reasons. The primary reason was due to a deficient environmental assessment. The court felt the applicant did not provided proper representation of the groundwater system through groundwater monitoring.

Hogle said the court's decision specified a number of reasons why they denied Haskell Mountain. The court felt the distribution of the groundwater monitoring that was done did not adequately represent what the groundwater was actually going to be on a number of the building sites.

Harris said one other thing came up with the court; that it's not up to DEQ to make land use decisions; it's up to the county.

Hogle commented on the traffic issue. The applicant was not required to do a Traffic Impact Study (TIS) because the county's regulations only require the study be done when a subdivision will approach a road that is maintained and operated by the county. Prior to writing the staff report, he received two letters from MDT regarding Highway 93 and access into the subdivision. Both letters stated they had no outstanding concerns. If they had concerns, a TIS would have been suggested.

**MOTION TO
ACCEPT F.O.F.**

Pitman made a motion seconded by Hickey-AuClaire to accept FPP 08-12 as finding-of-fact.

**BOARD
DISCUSSION**

Hickey-AuClaire asked if wording needed to be added to finding #18, to state the boundary of the highway had been rectified with a COS.

Cross said it was already a condition.

Hogle pointed out finding-of-fact #3, #14, and #18 all of which address that issue.

**MOTION TO
AMEND F.O.F. #3**

Hickey-AuClaire made a motion seconded by Pitman to amend finding-of-fact #3 by adding the following sentence to the end of the finding: *The submitted September 3, 2008 letter from Shane Mintz of the Montana Department of Transportation has adequately resolved the discrepancy.*

**ROLL CALL TO
AMEND F.O.F. #3**

On a roll vote the motion passed unanimously.

**BOARD
DISCUSSION**

Pitman asked if there was a finding-of-fact for the groundwater monitoring issue.

Hogle said finding #6 covers groundwater monitoring. There is a summary of the finding on page 19 of the staff report. The finding is based on an agency comment from the Flathead City-County Health Department.

Dziza asked the other board members if they were trying to figure out whether or not the groundwater monitoring was adequate.

Pitman felt the monitoring only covered a short period and maybe the highest water point was missed but couldn't be sure. Normally, monitoring is done over a longer period of time. He would be more comfortable with the findings if there had been more test holes in the southern part of the land.

The board discussed adding a new finding.

**MOTION TO ADD
F.O.F. #19**

Pitman made a motion seconded by Heim to add finding-of-fact #19 to state: *Information presented at the public meeting brings into question the adequacy of the ground water monitoring.*

**ROLL CALL TO
ADD F.O.F. #19**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hall asked the board if they should look at the wording of all the other findings to make sure they were understood; she referred to finding #6.

Cross thought it was a good idea.

Heim asked Cross if the board could add a finding-of-fact that goes against the Growth Policy.

Cross said it's a possibility if the language of the finding is worded correctly.

The board and staff discussed other possibilities of language for a new finding-of-fact.

**MOTION TO ADD
F.O.F. #20**

Heim made a motion seconded by Mower to add finding-of-fact #20 to state: *There was ample testimony at the public hearing that the proposal is unprecedented (in terms of density) and out of character with existing development in the immediate area.*

**ROLL CALL TO
ADD F.O.F. #20**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Dziza thought finding-of-fact #9 and #10 contradicted one another.

**MOTION TO
DELETE F.O.F.
#10**

Dziza made a motion seconded by Mower to delete finding-of-fact #10.

**ROLL CALL TO
DELETE F.O.F.
#10**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hall questioned finding #7. She thought the no-build zone might not be adequate in regards to the wetlands when taking into consideration photos and testimony brought forth during the public hearing.

The board discussed possible wording to add to finding #7.

Cross said he was concerned about finding #6. He felt it also needed to be amended based on information presented during the hearing.

**MOTION TO
AMEND F.O.F. #6**

Cross made a motion seconded by DeKort to amend finding-of-fact #6 by adding the following sentence to the end of the finding: *See new Finding #18 that acknowledges that the adequacy of groundwater monitoring was called into question.*

**ROLL CALL TO
AMEND F.O.F. #6**

On a roll call vote the motion passed unanimously.

**SUBSIDAIRY
MOTION TO
AMEND F.O.F. #7**

Hall made a motion seconded by Heim to amend finding-of-fact #7 to state: *Although* the proposed “No Build” zone would minimize impacts to the natural environment because it would provide an undisturbed 160-200 foot buffer between subdivision development improvements and the wildlife pond, wetlands, and the Stillwater River floodway *it may not be adequate.*

**ROLL CALL TO
AMEND F.O.F. #7**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Mower asked about the issue of response time for traffic in this area.

Hogle read the letter from the Chief in regard to the response time.

Cross and Mower discussed possibilities to amend the finding that deals with traffic safety.

DeKort brought up the issue of water runoff and storm water. The board discussed if there was a finding in place that addressed this issue.

Hogle read from the staff report exactly what it stated about storm water. He said typically, storm water is maintained on each lot. That’s usually a requirement in most Storm Water Management Plans.

Dziza said it has become common practice for a developer to build a pond for storm water drainage. For this application, the pond could potentially merge with the river and is not the best design for this area.

Pitman said however the developer wishes to control storm water drainage is up to them, but it needs to be addressed for this application.

The board and staff discussed suggestions of new language to amend finding-of-fact #8.

**MOTION TO ADD
F.O.F. #21**

Cross made a motion seconded by Hall to add finding-of-fact #21 to state: *Testimony and pictures were presented that called into question the adequacy of the stormwater management plan which directs all stormwater toward the river.*

**ROLL CALL TO
ADD F.O.F. #21**

On a roll call vote the motion passed unanimously.

**MOTION TO
AMEND F.O.F. #8**

Mower made a motion seconded by DeKort to amend finding-of-fact #8 to state: *Adverse effects of the proposed subdivision on the natural environment ~~would~~ may be minimized ~~and acceptable~~ with the imposition of conditions requiring a stormwater management plan to be developed as approved by the Montana Department of Environmental Quality, the developer to take necessary steps to manage noxious weeds on site, requiring a note to be placed on the face of the final plat stating that future owners of Lots are required to abide by the Dust Control Plan during and after site construction, and requiring the "No Build" zone to be shown on the face of the final plat.*

**ROLL CALL TO
AMEND F.O.F. #8**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed unanimously.

**MOTION TO
DENY**

Hickey-AuClaire made a motion seconded by Hall to approve staff report FZC 08-08 and recommend denial to the Board of County Commissioners.

ROLL CALL

On a roll call vote the motion passed unanimously.

OLD BUSINESS

Mary said the committee, that was supposed to meet this past Monday, needs to reschedule. She said the meeting will be rescheduled by e-mail since Randy Toavs was absent.

Cross read a message from Shelly Gonzales, the chairperson for BLUAC. She wanted to meet with the planning board on a semi or annual basis to discuss issue in their community and county. The meeting would be informal and would share concerns of other land use committees.

Mower thought it was a good idea for a separate meeting but maybe not for all board members to attend.

Cross talked about a previous issue BLUAC brought before the board. He said County Commissioners met on the issue and decided to accept the board's compromise on the gravel pit language but denied the

Growth Policy zoning request. The Commissioners approved neighborhood plans to be non-regulatory. However, he was not certain if this approval was final in regards to the 30-day protest period.

Mower suggested once that approval process is complete, then board members could start meeting with BLUAC to discuss other issues.

Cross didn't think an additional meeting with BLUAC would be necessary if the board is already meeting with them regarding the other issue that has already gone before the commissioners. He said he would send an e-mail to Shelly Gonzales to verify exactly what would be discussed in this other meeting. He will let the other board members know at the next meeting.

Hall asked if BLUAC would be invited here or if planning board members were supposed to travel to their meeting.

Cross thought for quorum purposes, it would be easier to have them come to us.

Mary asked the board members if they had binders for regulations, she had updated information to give them. She will get binders to the four members that do not have them.

The board discussed a new time for Committee A to meet. They decided to convene Wednesday October 1, 2008.

NEW BUSINESS

Dziza said the board needs to figure out what to do in regard to the storm water drainage issue.

DeKort read from the DEQ regulation booklet which stated a deferral submitted to them, regarding water and subsurface treatment systems, is impermissible.

ADJOURNMENT

The meeting was adjourned at approximately 10:50 p.m. on a motion by Hickey-AuClaire. The next meeting will be held at 6:00 p.m. on September 17, 2008.

Gordon Cross, President

Heather Soteris, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 11/19/08